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Novartis Consumer Health, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUE EARL,

Plaintiff,

v.

NOVARTIS CONSUMER HEALTH,
INC.

Defendant.

:
: Hon. Richard M. Berman, U.S.D.J.
: Civil No.: 07 CIV 9595 (RMB)
:

:
: **DEFENDANT'S NOTICE**
: **OF MOTION FOR**
: **SUMMARY JUDGMENT**
:

: **Document Electronically Filed**
:

PLEASE TAKE NOTICE that, at a date and time to be determined by the United States District Court for the Southern District of New York at the United States Courthouse, 500 Pearl Street, New York, New York, 10007, defendant Novartis Consumer Health, Inc. ("Consumer Health") moves for an Order (i) pursuant to Rule 56 granting summary judgment in favor of Consumer Health and dismissing the complaint in the above-captioned action against Consumer Health for lack of subject matter jurisdiction and (ii) denying Plaintiff's Motion to Amend the Complaint to name Nestle Healthcare Nutrition as a defendant.

PLEASE TAKE FURTHER NOTICE that this Motion is based on the concurrently filed Memorandum of Law in Support of Defendant's Motion for Summary

Judgment, the Certification of Mark Armstrong, the Certification of Gregory Tole, the Affidavit of Bon Lopez, the Declaration of Allyson M. Smith, Esq. with exhibits, and Defendant's Statement of Undisputed Material Facts Pursuant to Local Rule 56.1

PLEASE TAKE FURTHER NOTICE that Consumer Health hereby requests oral argument on this motion.

Dated: June 16, 2008

Respectfully Submitted,

s/Allyson M. Smith

Peter O. Hughes (admitted pro hac vice)

Allyson M. Smith (AS-4750)

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